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MONOPOLIES DURING THE REIGN OF JAMES I

BY

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CONTENTS

- I Monopolies in Theory and Practice.
- II The Early Opposition, 1606-1614
- III The Parliament of 1621 and the Statute of Monopolies.

/ Bibliography

Autobiography

MONOPOLIES IN THEORY AND PRACTICE

When Elizabeth I ascended the throne in 1558, she was confronted with a changing economic situation. English industry, which had for centuries been localized in the towns under guild control, was maturing and becoming national in scope.¹ In accordance with the prevailing economic precepts of the age, Elizabeth desired to bring industry under a system of national regulation. Such a system of regulation was, however, even for the strongest and most ingenious of the Tudor autocrats, a difficult and elusive goal. Plagued throughout her long reign by a shortage of funds, Elizabeth simply could not afford to involve the state in public enterprise on its own account.² Another method of gaining a grip on industry had to be devised. For a sovereign who possessed ample power but inadequate financial resources, the most logical course of action was the establishment of a system of patents. By granting patents of monopoly the Queen could assure those with the capital to start a new industry exclusive privileges on a national scale, thus allowing her simultan-

¹William H. Price, The English Patents of Monopoly (Boston: Houghton, Mifflin and Co., 1906), p.6.

²Ibid, p.7.

ously to stimulate industrial development and retain control over it. After a slow start Elizabeth made grants with such steadily increasing vigor that by the closing years of the reign her system of patents had become very widespread indeed. More important, many of Elizabeth's patent grants constituted a serious annoyance to the public at large. While many patents of monopoly were feasible or even commendable in theory, very few proved to be so in practice.

The incentive which originally prompted Elizabeth to grant monopoly patents was a genuine desire to stimulate industry and encourage invention, but as the years passed such legitimate considerations began to fade, and others less commendable appeared. The principal motivation behind the granting of patents soon became mercenary.³ Few grants were made, much less sought, which did not promise monetary aggrandizement either to the Crown or to the patentee. Elizabeth took advantage of monopoly grants to both collect and pay off debts, to reward favorites and servants, and to supplement her royal incomes.⁴ Debtors, creditors, and favorites who became patentees were scavengers. Their grants amounted to licenses to bleed the English people with the blessing of the Queen, who was more than happy to share the profits. But share in the profits was one thing Elizabeth and later James never really managed to accomplish. As far as providing a means by which to enrich the royal exchequer, the patent system was a dismal failure.

³Ibid, p.14.

⁴Ibid, p.15.

On several different occasions Elizabeth's parliaments complained of the indignities and abuses which the English people were suffering at the hands of the patentees and their agents. Because of the iron-gripped control the Queen exercised over her parliaments the protests of the House of Commons went unheeded for many years. Members who dared even to speak of monopoly abuses were reprimanded.⁵ Meanwhile, the situation deteriorated to the point where the system of patents might be justly described as an ugly monster, rotten with corruption and abuse. Finally, in 1601, the monopolies aroused a storm of indignation so great that even Elizabeth had to yield. She was forced to concede that some of the patents had been abused, and thereupon voided the more obnoxious ones and gave to the courts of law the right to determine the validity of those remaining in force.⁶

At this point it became clear that Elizabeth had stretched her prerogative of interference in the matter of trade to the breaking point. Great oppressions had been practiced in her name and by authority of her patents. Under management less adept than hers the widespread indignation aroused by patent abuses might have led to a political upheaval.⁷ Elizabeth was able to stave off a challenge to her authority by adroit political maneuvering, but her victory was only a superficial one. The seeds of discontent over the monopolies

⁵Ibid, p.20

⁶Ibid, p.22

⁷John W. Gordon, Monopolies by Patents, and the Statutable Remedies Available to the Public (London: Stevens and Sons, Ltd., 1897), p.1.

were deeply sown,⁸ and it was left to Elizabeth's inexperienced Scottish successor, James Stuart, to reap their bitter fruit.

On May 7, 1603, only four days after his arrival in London to assume the throne, James I recalled all patents of monopoly. The proclamation contained a preamble praising the loyalty and devotion of the English people. The body of the decree stated that, in consideration of this loyalty, James desired to show how willing he was and always would be to requite the people's love. Realizing that monopolies had constituted a serious grievance to the public during the last years of "our sister" Elizabeth's reign, James demonstrated his gratitude by suspending all grants and charters of monopoly and all "licenses to dispense with penal laws, except grants to corporations and companies of arts or 'misteries' and for enlarging trade until examination can be had of them by the king with the advice of his Council".⁹ Because digging for saltpeter was deemed necessary to the national welfare, patents for this right were not suspended, although saltpetermen were advised to take special care in the pursuit of their tasks. In view of the abuses ordinarily attendant upon this industry, the exercise of a little care would have been a great improvement indeed. Subjects desiring to petition the king were advised to do so privately and in an orderly manner.¹⁰

It thus appeared that James would be content, at least for a

⁸Ibid, p.2.

⁹Price, English Patents, p.163.

¹⁰Ibid.

while, not to overstep what seemed to be the outer limits of the prerogative in regard to trade.¹¹ Undoubtedly this proclamation was the work of Robert Cecil, the Earl of Salisbury, and other of the King's advisers, who seized upon the change of dynasty to remove flagrant grievances.¹² It was a wise and greatly needed step, but those who regarded it as a true revelation of James's intentions were to be painfully disillusioned later on. James was still putting on fair shows in March, 1604, when he opened his first parliament. In his speech he apologized for the lack of favors and grants, presumably in the form of patents, to friends and others who might have expected them. To further ameliorate the monopoly situation, James established permanent investigative machinery which included a body called the Commission for Suits.¹³ This commission would evaluate all petitions for patents, and none would be granted without its approval. The great potential for good of this group was never properly exploited, so it provided little check on the evils of monopoly. Among the referees, as members of the Commission were called, Sir Francis Bacon was the most prominent. His role in the subsequent history of the monopolies was an important one. Yet, despite his good start, James proved unable to control his grants. By 1606 the House of Commons had begun to complain loudly about abuses perpetrated by authority of his patents.

¹¹Gordon, Monopolies by Patents, p.3.

¹²Astrid Friis, Alderman Cockayne's Project and the Cloth Trade (London: Oxford University Press, 1927), p.147.

¹³Price, English Patents, p.25.

A monopoly may be defined as a form of state control encompassing "the delegation of authority to an individual or group of individuals acting in a corporate capacity".¹⁴ Patents of monopoly as issued by James I may be differentiated into four categories, not all of which are to be condemned. According to Sir Francis Bacon, the first type of monopoly by patent was legitimately granted when "any man out of his own wit, industry or endeavour finds out anything beneficial for the commonwealth".¹⁵ The famous 1603 Case of Monopolies, *Darcy vs. Allen*, established this as the only justifiable basis for a patent grant, and patent laws ever since have been grounded on this principle. The court in this case also held that monopolization of any trade not newly invented or imported was illegal and detrimental to England.¹⁶ Patents were granted not only for first invention of a machine or process, but also for first importation.¹⁷

The second type of patent to be considered is the license, of which there were two types. The export license granted the patentee immunity from some trade restrictions, particularly those under which the export of certain goods was prohibited. Licenses of this type were generally beneficial, especially those designed to circumvent

¹⁴Ephraim Lipson, The Economic History of England (London: A & C Black, Ltd., 1931, 3 vols.), III, p.352.

¹⁵Ibid.

¹⁶Price, English Patents, p.24.

¹⁷Lipson, Economic History, III, p.352.

the ban on the export of raw materials.¹⁸ These licenses, the most important of which permitted the export of unfinished cloth, were vital to the English economy. As the Cockayne Project of 1614-1617 so devastatingly demonstrated, the country's economy could not stand the burden of being able to export only finished products.¹⁹

Another type of license was the dispensing license, which allowed the patentee to compound with offenders for the breach of certain laws which regulated industrial processes. When these laws proved unworkable, as in the case of the tanning trade, patents were issued to private persons who would, ideally, grant pardons or dispense with penalties for violations of the statutes.²⁰ The opportunities for abuse inherent in such arrangements were unmercifully exploited, thus pointing up one of the great weaknesses of James's government: its lack of a bureaucracy.²¹ For his commercial regulations ever to be effectively implemented, James would have had to separate enforcement, or unenforcement, from the profit motive.

The right of supervision over an industry or trade constituted the third type of patent. Sir Walter Raleigh, for instance, was entitled to license taverns and authorize the retail sale of wine. While regulation of such commodities as wine may have been necessary,

¹⁸Price, English Patents, p.9.

¹⁹Ibid., p.10.

²⁰Ibid., pp.12-13

²¹Christopher Hill, Century of Revolution, 1603-1714 (Edinburgh: Thomas Nelson and Sons, Ltd., 1961), p.29.

an unhealthy "feudalism" was still created in any industry subjected to this form of control.²² The abuses practiced under the authority of supervisory patents could and did reach ludicrous proportions. The most notorious offender was Ludovick Stuart, the Duke of Lennox and a kinsman of James, who in 1605 was appointed Aulnager of the New Drapery.²³ The New Drapery was a specific kind of woolen cloth, however James, in making the appointment, lumped together all types of cloth under the aulnager's jurisdiction.²⁴ The duty of the aulnager was to search the new drapery and to seal those that conformed to at least the minimum standards of quality and dimension. Lennox's agents, however, sold the seals without even looking at the cloth.²⁵ While the industry deteriorated, Lennox got rich.

The most troublesome and obnoxious category of patent was the fourth type, which involved the handing over of an established trade lock, stock and barrel to an individual or group. It was described as

a kind of commerce in buying, selling, changing or bartering; usurped by a few and sometimes but by one person . . . whereby . . . the liberty of trade is restrained from others [and] the monopolist is enabled to set a price of commodities at his pleasure.²⁶

The Parliament of 1604 indignantly described such patents a "a private

²²Lipson, Economic History, III, p.354.

²³Mary A. E. Greene (ed.), Calendar of State Papers, Domestic Series (London: Longman, Brown, Green, Longman and Roberts, 1857, 12 vols.), VIII, p.233.

²⁴W. Cunningham, The Growth of English Industry and Commerce in Modern Times (Cambridge: University Press, 1912, 3 vols.), II, p.297.

²⁵Lipson, Economic History, III, p.354.

²⁶Ibid, p.355.

or disordered engrossing for the enhancing of prices, for a private purpose, to a public prejudice."²⁷ Patents of this kind could and did evolve from patents validly granted for inventions or importations. Patents for new processes for making soap and glass, for example, led gradually to the domination of those industries by the patentees.²⁸

Undoubtedly the most destructive and notorious example of a trade being handed over completely to a patentee whose intentions were less than noble was the infamous Cockayne Project. This ill-fated venture had its origins in the troubles of the London Eastland Company, which was engaged in the cloth export trade to the Baltic. In the early seventeenth century the Eastland merchants encountered fierce competition in the Baltic cloth markets from the Dutch. The cloths shipped to the Baltic markets by the Eastland Company were manufactured, dyed and dressed in England. The cloths sent to the Baltic area by the Dutch were also manufactured in England, but were then sent in an unfinished state to Holland. The Dutch, who had no mills of their own, applied their own superior finishing processes to the cloth and shipped it on to the Baltic markets, where it provided dangerous competition for the English.²⁹

The Dutch obtained their raw cloth from the Merchant Adventurers Company of London, with whom the Eastlanders were understandably at odds. As early as 1602 the Eastland merchants had attempted

²⁷Ibid.

²⁸Ibid.

²⁹Friis, *Cockayne's Project*, p.230.

to obtain permission to export unfinished cloth to the Baltic. This would have caused skilled dyers and dressers to accumulate in ports such as Danzig, thus establishing a steady market for the unfinished cloth.³⁰ This attempt, however, failed, and the Eastland share of the trade continued to decline steadily in the face of the superior Dutch product.³¹ To worsen matters, most of the Eastland merchants were not involved in other facets of the export business which could tide them over when the cloth trade foundered.³² Sixty-six per cent of the Eastlanders trading in 1606 had retired by 1614.³³

England had laws forbidding the export of unfinished cloth beginning in the fifteenth century and continuing throughout the sixteenth. At the same time, however, licenses were constantly being granted which gave permission to export unfinished cloth.³⁴ The basis for the granting of these licenses was the underdevelopment and inferiority of the English finishing industry. English cloth turned a much greater profit when exported in a raw state. When dyed and dressed and then shipped out, its value dropped considerably.³⁵ By granting licenses the state had supported those who produced and handled cloth (manufacturers and merchants) against those who used it (dyers and dressers). The dispute between the two

³⁰Ibid.

³¹Ibid, p.231

³²Ibid, p.232.

³³Ibid, p.233.

³⁴Lipson, Economic History, III, p.376.

³⁵Ibid, p.378.

factions came to a head while James I was on the throne.

William Cockayne was a member of the London Eastland Company who had gained prominence, and wealth, in the cloth trade. His wealth was such that he was able to lend the King as much as £ 6000, an amount owed him by James in 1610. Fiscal maneuvering of this kind gained Cockayne a place in the royal favor, and no doubt helped launch his political career. He was elected sheriff of London in 1610, and in 1612 became an alderman of the city.³⁶

In 1606 Cockayne threw in his lot with those who favored a bill requiring that all colored cloth be dressed before export.³⁷ The rationale behind the bill was that it would provide more work for English clothworkers. It passed, but only over the strong opposition of a group of Merchant Adventurers, whose dyed Somerset and Essex cloths were affected. They argued that if the English ceased to export unfinished cloth, the Dutch would be forced to start manufacturing their own cloth and thereby provide even more worrisome competition than before.³⁸ This expression of fear was later proved to be tragically prophetic.

This small victory convinced the ambitious Cockayne that, if either parliament or the Privy Council could ever be persuaded to prohibit completely the export of undyed and undressed cloth, he would be in a position to obtain exclusive rights to the cloth trade.

³⁶Friis, Cockayne's Project, pp.235-236.

³⁷Ibid., p.236.

³⁸Ibid., p.237.

The Merchant Adventurers would stop their trade in protest.³⁹ While he planned to base his pleas on the need to bolster and improve the cloth finishing industry of England, Cockayne's real objective was to garner a portion of the unfinished cloth trade held by the Merchant Adventurers Company.⁴⁰ Cockayne could not have believed that he would be able to replace the Adventurers' trade in white cloth with goods dyed and dressed at home.⁴¹ Finished cloths would probably be sent only to markets where he had pre-existing privileges.⁴² The opportunities for the quick profits Cockayne hoped to make were in the white cloth trade to the Low Countries and Germany. Cockayne's principal interest was in "direct exportation to the countries where the cloth was used".⁴³ The talk about promoting dyeing and dressing was just that.

Cockayne's opportunity to translate his scheming into action came in 1612 with the death of Salisbury, who had been the King's most reliable adviser.⁴⁴ By this time Cockayne was an alderman of London and held James in his debt. Judging the moment to be propitious, Alderman Cockayne introduced a plan whereby all cloth leaving the Kingdom must first be dyed and dressed. The plan would supposedly

³⁹Ibid, p.238.

⁴⁰Barry E. Supple, Commercial Crisis and Change in England, 1600-1642 (Cambridge: University Press, 1959), p.36.

⁴¹Friss, Cockayne's Project, p.238.

⁴²Supple, Crisis, p.36.

⁴³Friss, Cockayne's Project, p.239.

⁴⁴Ibid.

save England £700,000 a year and provide the Crown with a handsome annual stipend.⁴⁵ Because Cockayne was looked upon with favor and because the project flattered his vanity, James lent it his vigorous support. As often happened, he remained blind to the risks involved.

If James did not realize the risks inherent in the Cockayne Project, others, mainly the Privy Council, did. At first the King appointed a committee to review the project, but it was quickly dissolved when it failed to approve the idea.⁴⁶ This made it clear that getting the plan accepted was not going to be an easy task. Along with the doubts of the Privy Councillors, only two of whom backed Cockayne,⁴⁷ James had to face the adamant opposition of the Merchant Adventurers, who would be deprived of all their trading privileges if the plan passed. Thus, to bolster his position, the King secured the support of Sir Edward Coke. At this time, Coke, the greatest common lawyer of the seventeenth century, was still a member of the King's bench, and had not yet joined the parliamentary opposition he was later to lead so effectively. Having a man of Coke's reputation and ability speaking for it greatly enhanced the project's chances of passage.

Coke submitted a report on the proposed plan to the Privy Council in December, 1613. In the report he scathingly attacked the

⁴⁵Lipson, *Economic History*, III, p.378.

⁴⁶*Ibid.*, *Cockayne's Project*, pp.240-241.

⁴⁷*Ibid.*, p.261. The two Privy Councillors who supported Cockayne were Suffolk and Lake.

Merchant Adventurers and praised Cockayne's project for both its legality and its convenience. He first established to his own satisfaction the legality of the project. The patent of the Merchant Adventurers, who specialized in exporting unfinished cloth, also allowed them to export dyed and dressed cloth. Coke maintained that because they had not exercised this right they had forfeited it, and thus it would be no infringement upon them to grant a license for the same privilege to Cockayne. Furthermore, said Coke, the traditional legislative attitude toward such matters was to employ native Englishmen in the preparation of products. He cited laws dating from Edward IV that prohibited the export of semi-finished manufactures. Lastly, Coke declared the Merchant Adventurers' Charter void because it inhibited the general trade of England and was therefore a monopoly.⁴⁸ It was not at all surprising for Coke to assail a monopoly, but it was not typical of him to urge its replacement with still another that promised to be even more obnoxious.

As for the convenience of the proposed measure, Coke felt certain that it would insure the maintenance of both the clothworkers and the merchants and thus preserve the cloth trade, which was of the greatest importance to England.⁴⁹ Coke put off those who opposed on account of a dye shortage by promising that the project would not

⁴⁸Ibid, pp.245-246

⁴⁹Ibid, p.246.

be started until adequate supplies could be obtained. Also, the finishing of cloth at home would supposedly end the deceitful stretching of English cloth abroad. This stretching, allegedly done by other parties, had been soiling the reputation of English manufacturers.⁵⁰

So went the argument in favor of Alderman Cockayne's project. The best attack on the idea was delivered by Robert Middleton in a speech to the House of Commons on May 20, 1614. Middleton, a Merchant Adventurer himself, was attempting to win over the House of Commons, since that was the only body that could have intervened and blocked the project. Middleton correctly accused the projectors of desiring only to grab a share of the unfinished cloth trade. In the view of the Merchant Adventurers, who should have known, Cockayne could not possibly maintain the trade at an acceptable level. Middleton further contended that the dissolution of the Merchant Adventurers would constitute a criminal encroachment on the rights of its members. A man's inheritance in his trade was just as valid as that of a landowner in his land.⁵¹

But Middleton's pleas went unheeded in the House. Members of the Commons were primarily concerned with preventing a stagnation in the cloth trade. As long as this vital trade prospered, they cared little for the company or companies involved. In fact, the

⁵⁰Ibid, p.247.

⁵¹Ibid, pp.255-256.

Commons was if anything fairly hostile to the Merchant Adventurers who, it was thought, were reaping a disproportionate share of the benefits of the cloth trade.⁵²

There were other objections to the Cockayne Project that probably carried more weight. They portended the failure of the project even before it had begun. First, cloth finished in England would meet with resistance abroad, especially from the Dutch, who wanted to do their own dyeing and dressing. The inferiority of English finishing made this problem an insurmountable one. Second, a shortage of dyestuffs might cause a disastrous stand in the trade. Finally, and most important, the cloth trade, now stable and prospering, would degenerate into an uncertain commodity. Since he could never hope to send out as many cloths finished as were now sent unfinished, Cockayne stood to "change a settled estate into a hope".⁵³

That the Privy Council shared these doubts is beyond question. The Council was irresolute, and expressed the opinion that the Cockayne venture could succeed only if the Old Merchant Adventurers could be persuaded to join in. The old company, however, staunchly resisted,⁵⁴ and thus doomed the project before it started.

Finally, despite the reservations felt by many, the Cockayne Project was approved and went into effect in 1614. Alderman William

⁵²Ibid, p.256.

⁵³Ibid, p.259.

⁵⁴Ibid, pp.259-260.

Cockayne and his band were incorporated as The King's Merchant Adventurers of the New Trade of London.⁵⁵ The privileges of the Old Merchant Adventurers were revoked. From almost the very beginning it was apparent that Cockayne was headed for a fiasco. The volume of exported cloth plummeted, and the few that were shipped found foreign markets closed. In the third year of the plan's operation only 52,000 cloths left England as against 81,000 in 1614.⁵⁶ The resumption of the export of raw cloth did not serve to significantly slow down the rapid decline of the trade. As had been predicted, the Dutch began to successfully build mills of their own.⁵⁷ The English clothworkers who were supposed to benefit so hugely from the Cockayne Project were worse off than ever.⁵⁸ To help the clothworkers the new company agreed to buy up cloths for which there was no market, but this could last for only so long. By 1616 the Privy Council was lamenting the degeneration of the cloth trade from "a flourishing state to that which it is now come unto".⁵⁹ Even James had to concede that the Cockayne Project had failed miserably. He announced that he did not intend "to insist and stay longer upon specious and fair shows which produce not the fruit our actions do ever aim at".⁶⁰ The King's Merchant Adventurers were dis-

⁵⁵Lipson, Economic History, III, p.379.

⁵⁶Friis, Cockayne's Project, p.382.

⁵⁷Lipson, Economic History, III, p.382.

⁵⁸Ibid, p.379-380.

⁵⁹Ibid, p.380.

⁶⁰Ibid, p.381.

solved in January, 1617,⁶¹ and the rights of the original Merchant Adventurers were restored for a fine of £50,000. To recoup the £50,000, which amounted to a bribe, the restored traders raised their prices, thus further hindering the rehabilitation of the trade.⁶²

The failure of the Cockayne Project may perhaps be finally traced to the wisdom of the displaced Old Merchant Adventurers.⁶³ Those who had felt that the project would succeed only if the capital and experience of the old company were injected into it were proven correct. Men from the old company were continually offered preferred positions of membership in the King's Merchant Adventurers, and all but a very few refused. From the beginning the Old Adventurers had made clear their assumption that Cockayne would be concerned only with dyed and dressed cloths, and that failure in that area alone would result in the restoration of the old company. The Merchant Adventurers never so much as acknowledged the right of the King's Adventurers to trade in undressed cloth. The wealthiest old traders not only did not enter the new company, they kept their capital completely out of the cloth trade. The Merchant Adventurers' refusal to become involved was the chief cause of Cockayne's inability to handle even the trade in unfinished cloth, for which there was a steady market.⁶⁴

⁶¹Greene (ed.), CSPD, VIII, p.422.

⁶²Lipson, Economic History, III, p.381.

⁶³Supple, Crisis, p.36.

⁶⁴Ibid.

The Cockayne fiasco not only dealt the English cloth trade a blow from which it took years to recover; it also dealt a telling blow to the theory of state regulation of economic life. Combined with the other monopoly abuses that were constantly appearing, the Cockayne affair constituted a damning indictment of state control. The monopoly controversy led many English businessmen to believe that state control might do more harm than good.⁶⁵ The Cockayne Project can at least take credit for having helped to foster this healthy trend.

It is necessary to examine the factors which prompted James to resume the grant of monopoly patents after temporarily suspending them. The early Stuarts thought it their duty to regulate industry, wages and working conditions.⁶⁶ The idea of regulation was not to prevent evils, but to try to establish and maintain positive and good standards of social and industrial well-being.⁶⁷ The grant to Lennox to inspect the new drapery, or the laws to standardize the tanning process were manifestations of the desire to uphold standards of quality. James's attitude toward the industry and trade of his country was fatherly, and harmful. One ruler, who knew little enough about the economy, and his ministers

⁶⁵G. N. Clark, The Wealth of England from 1496-1760 (London: Oxford University Press, 1947), p.121.

⁶⁶Hill, Century, p.29.

⁶⁷Cunningham, English Industry, II, p.285.

could never have wisely guided the course of trade in a rural country. They simply could not take account of all the constantly shifting factors affecting England's economy.⁶⁸

The economic meanderings of James's government were not popular because they involved interference in the ordinary course of business, which most Englishmen regarded as inviolable. As reflected by the combative demeanor of their elected representatives, the public demanded justification for restrictions on their rights. The greatest dissatisfaction was with the practice of conferring extreme powers on individuals or companies in regard to industrial avocations.⁶⁹ That is to say that monopolies which prevented English citizens from pursuing their livelihoods were disliked, and with obvious cause. The burden of justifying the monopolies lay with the government, whose case was non-existent. Few if any patents could be said to have advanced the commonweal.

Popular opinion did not ascribe to James any laudable motives in his granting of patents. It was widely and correctly believed that most of James's grants could be attributed to his constant lack of money. By 1603 the monopolies had ceased to be the economic necessities they once had been.⁷⁰ During James's reign

⁶⁸Ibid.

⁶⁹Ibid, p.286.

⁷⁰G. W. Prothero, Select Statues and other Constitutional Documents illustrative of the Reigns of Elizabeth and James I (Oxford: The Clarendon Press, 1898), p.LXXIV.

there was a good deal of free and honest enterprise in English industry, but its healthy effect was negated by the greed of speculators and monopolists.⁷¹ The court was crowded with courtiers, favorites, projectors and others agitating for special privileges. Most of these petitioners were interested in personal gain, and stood ready and willing to exploit both the people and the government. The courtiers were there either on their own behalf or on behalf of a man with an idea but no influence. The influence which some insiders were able to muster was a high-priced commodity. Sir Thomas Bartlett offered one such influence-wielder £4000 for help in securing a monopoly of pins.⁷² Bartlett's eventual reward for his involvement in the pin industry was penury and a visit to the Tower for making himself a nuisance.⁷³ Indeed, it would be wrong to assume that the lot of the patentee was always an easy or profitable one. As noted by Sir Edward Coke in 1607, the monopolist often had "a dear rate to pay for his foolishness".⁷⁴ Many liquidated valuable assets and then sunk the proceeds into a monopoly, "thereby to annoy and hinder the whole public weal for

⁷¹George Unwin, Studies in Economic History: The Collected Papers of George Unwin (London: Macmillan and Co., Ltd., 1927), p.324.

⁷²George Unwin, Industrial Organization in the Sixteenth and Seventeenth Centuries (London: Cass and Co., 1957), p.166.

⁷³Ibid.

⁷⁴Lipson, Economic History, III, p.357.

his own private benefit. In which course he thriveth so well as that by toiling some short time . . . he doth . . . purchase to himself an absolute beggary."⁷⁵ Coke characteristically added that, "their purposes and practices considered, I can wish unto them no better happiness."⁷⁶

The most bothersome of the crowd which filled the court were the projectors, to whom many odious patents may be attributed. They pursued their goals, however, in a manner which made them seem less unscrupulous than they were. In seeking a grant they would propose, for example, to fill some gap in the system of inspection and supervision, and at the same time enrich the coffers of the King.⁷⁷ James and his referees too often fell prey to these allegedly beneficial schemes. In theory they always seemed plausible, but in practice they were almost never worthwhile. Because it reviewed all petitions for patents, the Commission for Suits bears a good deal of responsibility for these monopolies. The King himself had no real interest in commercial affairs,⁷⁸ and merely granted patents when that seemed to be an expedient course of action. It was a very convenient way of repaying debts, as in the case of Alderman Cockayne, and of recouping the great sums he extravagantly passed out to relatives and favorites such as Somer-

⁷⁵Ibid.

⁷⁶Ibid.

⁷⁷Ibid, p.356.

⁷⁸Friis, Cockayne's Project, p.114.

set and Buckingham.⁷⁹ James had hoped at one time that income from monopolies might help him become independent of parliament.⁸⁰ But, like Elizabeth, he soon found that monopolies were a meager source of income at best. For all the ill-feeling they stirred up among the people, the monopolies brought James less than £900 a year in revenue.⁸¹

The character of James also played a part in the story of the monopolies. James was not the dunce that popular opinion, with the aid of Alexander Pope, has traditionally thought him to be. He was a man of some ability and erudition, and was able to entertain advanced ideas, such as the desire for a true union with Scotland and toleration for the Catholics.⁸² There was nothing in James's make-up, however, that fitted him for the task of governing a country. As a ruler, James was incompetent. He had no real sense of purpose, was unable to comprehend the English parliamentary system and, most important in relation to the monopolies, had a great weakness for favorites.⁸³

This weakness for favorites led to the rise of the notorious George Villiers. James first met Villiers at Apethorpe in 1614 and

⁷⁹Wallace Notestein, The Winning of the Initiative by the House of Commons (London: Oxford University Press, 1924), p.31.

⁸⁰Price, English Patents, p.31.

⁸¹Lipson, Economic History, III, p.356.

⁸²J. R. Tanner, Constitutional Documents of James I, 1603-1625 (Cambridge: University Press, 1930), pp.2-3.

⁸³Ibid., p.3.

liked him immediately. Villiers was extraordinarily handsome, possessing the alluring traits of both sexes. He had the masculine strength to excel at sports and dancing, yet his features, especially his face and hands, were of feminine delicacy.⁸⁴ James loved him to distraction, and there can be no doubt that the relationship had homosexual overtones. Throughout his career Villiers pretended to return James's love in full measure, mainly because it was necessary if he were to maintain his position.

After winning James so completely, Villiers' rise was meteoric. In slightly more than two years time he rose from squire to earl, becoming in January of 1617 the Earl of Buckingham, by which name he is commonly known.⁸⁵ Buckingham rose to the dignity of Marquess on New Year's Day, 1618, and in 1619 was made Lord High Admiral. Buckingham was married in May 1620, to Katherine Manners, daughter of the Earl of Rutland, a Catholic. She converted and they were married by John Williams, the Dean of Westminster.⁸⁶ The favorite did not become the Duke of Buckingham until 1623 when he was in Spain with Prince Charles and in need of all the rank he could muster. Before he could raise Buckingham James had to make his Scottish kinsman Lennox the English Duke of Richmond, thereby preserving

⁸⁴David H. Willson, James VI and I (New York: Henry Holt and Company, 1956), p.384.

⁸⁵G. P. V. Akrigg, Jacobean Pageant (Cambridge: Harvard University Press, 1962), pp.205-206.

⁸⁶Sir Sidney Lee, Sir Leslie Stephen (eds.), The Dictionary of National Biography (1949 ed., 22 vols.), XX, p.329.

his precedence.⁸⁷

Buckingham had all the faults associated with one in his position. He was excessively vain, obstinate to the point of being nicknamed the white mule, promiscuous and fawning.⁸⁸ But he was also intelligent and had an interest in government and administration that made him more destructive than previous favorites had been. Buckingham's ascendancy over James was nearly absolute, and so he easily secured anything for which he troubled to ask. He wanted to gain note as a dispenser of patronage,⁸⁹ and this he did.

After gaining favor Buckingham wasted little time in beginning to take advantage of his position. Through his influence his mother became the Countess of Buckingham, and his brother Christopher was made an earl. But the most important manifestations of his influence were the monopolies which came out of the so-called Buckingham ring, whose principals were the favorite, his brother Sir Christopher Villiers, and his half-brother Sir Edward Villiers. The most active agents for the ring were Sir Giles Mompesson and Sir Francis Michell.⁹⁰ This group held patents for inns, alehouses, and gold and silver thread, all of which were extremely objectionable in practice if not in theory. These men and their

⁸⁷Alrigg, *Pageant*, p.206.

⁸⁸*Ibid*, p.205.

⁸⁹Lee and Stephen (eds.), *DNB*, XX, p.328.

⁹⁰Price, *English Patents*, p.32.

patents played a major role in the monopoly furor of 1621.

Actually, it would be inaccurate to say that James had what could be called a commercial policy. His main concern was the assertion and furtherance of his royal powers. The King's attention could be diverted to commercial questions only when he thought, or could be made to think, that these matters might serve to enhance his kingly splendor. Nor could James's parliaments be said to have had any settled commercial policies.⁹¹ The economic attitudes and actions of both were outgrowths of the power struggle which developed between them. The struggle, which culminated in the Parliament of 1621, was most clearly reflected by the monopoly controversy. The basic fact of parliament's thinking throughout was its opposition to what they considered James's meddling in areas that should have been off limits to him. The House of Commons was just as deeply interested in asserting what it thought to be its rights as James was in asserting what he thought to be his. Actually, both James and the Commons claimed more power than precedent and tradition granted them.⁹² The conflict was inevitable, and the Commons' successful opposition to the monopolies played no small part in its eventual victory.

Before going into the parliamentary opposition to the monopolies, it is necessary to examine two closely related factors which great-

⁹¹Fris, *Cockayne's Project*, p.134.

⁹²*Ibid.*, p.135.

ly affected the King - Parliament relationship. One was the political behavior and thinking of James I, and the other the emergence of a new and independent leadership in the House of Commons.

James's relationship with his parliaments must be viewed in the light of his stated political beliefs. Throughout his life James I was a firm believer in the divine right of kings. He described what he thought to be the proper relationship between himself and the country of England in the following terms: "I am the Husband, and the whole Isle is my Lawfull Wife; I am the Head, and it is my Body."⁹³ Carrying it even further he declared kings to be "the breathing images of God upon earth."⁹⁴ Such ideas were definitely not in vogue in early seventeenth-century England. Yet, throughout his reign, in plain opposition to the spirit of the times, James insisted on the hereditary character of his title,⁹⁵ and never failed to attempt to further his prerogative when the opportunity arose.

The most comprehensive exposition of James's political theories is to be found in The Trew Law of Free Monarchies, published in 1598. The fact that James clung religiously to the doctrines promulgated in this book goes far toward explaining many of his later actions.

⁹³Charles H. McIlwain, The Political Works of James I (Cambridge: Harvard University Press, 1918), p.XXXV.

⁹⁴Ibid.

⁹⁵Ibid., p.XXXVI

Once he had set a course for himself the King seldom deviated.⁹⁶ He claimed that his power was absolute because his ancestors had conquered England and Scotland, and therefore absolute ownership of the lands lay in him. As absolute overlord of the land, the King had the power of life and death over his subjects. While he would never take a subject's life without clear justification by law, all law did have its origin in the sovereign himself.⁹⁷ It was only natural for James to believe that the royal prerogative was "no Subject for the tongue of a Lawyer, nor is lawful to be disputed".⁹⁸

James did not believe in the independence of a national assembly such as Parliament, much less in the superiority it claimed for itself. He felt able to do "without advice or authority of either Parliament or any other subaltern judicial seat".⁹⁹ Parliament was derided by James as "nothing else but the Head Court of the King and his vassals".¹⁰⁰ It was fully within the king's rights to "make daily statutes and ordinances, enjoining such pains thereto as he thinks meet, without any advice of Parliament or estates".¹⁰¹ James was annoyed by the way men in the English Parli-

⁹⁶Ibid., p.XXXVII.

⁹⁷Ibid., p.XXXVIII-XXXIX.

⁹⁸Ibid., p.XL.

⁹⁹Ibid., p.XLI.

¹⁰⁰Ibid.

¹⁰¹Ibid.

ament constantly proposed new laws. He disliked the freedom of debate in England, preferring the Scottish Parliament, where members could speak only with the permission of the chancellor, and could be silenced by him. Unpleasant experiences with Parliament prompted James to advise his son Charles to hold parliaments only for the making of new laws, and even then as seldom as possible.¹⁰² That does not seem to have been the solution to the problem.

It must be said for James that he ranked his duties second only to his powers. He acknowledged that a good king was made for the people, not the people for the king.¹⁰³ As it turned out the people of England, with James on their side, had little need of enemies. His dedication to serving the people might have been a saving grace had he proved capable of acting upon it.

Ideas such as those embraced by James were anachronistic in seventeenth-century England. The independent and tough-minded men who came to dominate parliament during James's reign held diametrically opposite views. They reflected the feelings of the populace which had sent them to London. These country gentlemen, many of them skilled and ambitious lawyers, were "less subservient to the royal and conciliar will"¹⁰⁴ than their predecessors had

¹⁰²Ibid, p. XLII.

¹⁰³Ibid, p. XLIV.

¹⁰⁴Notestein, Winning the Initiative, p.47.

been. They owed their primary loyalty to the common law,¹⁰⁵ and when James did not pay proper respect to this, their god, then the battle was joined. The first Stuart ruler regarded his prerogative as "that especial power, pre-eminence or privilege that the King hath above the ordinary course of the common law".¹⁰⁶ The phrase "above . . . the common law" connoted a concept destructive of the English constitution, and therein lay the quarrel between James and his parliaments.¹⁰⁷

As talented and aggressive as the oppositionists were, they might not have fared so well without the help of James's political ineptitude. In the past, the stationing of skillful Privy Councilors in the House of Commons had proven to be an effective method of controlling that body.¹⁰⁸ James, however, made the mistake of sending inexperienced men against the likes of Sir Edwin Sandys and Nicholas Fuller. In the battles over grievances such as the monopolies, these men came off second best and the initiative in the commons passed over the opposition.¹⁰⁹ By the time these men had gotten enough experience to ably represent the royal point of view, James pulled them out of the Commons and made them peers of the realm.¹¹⁰ Thus James, who cared so much for royal privilege, bungled about and seldom had any proven men in the Commons to speak for

¹⁰⁵Ibid, p.50.

¹⁰⁶Prothero, Select Statues, p.CXXV.

¹⁰⁷Ibid.

¹⁰⁸Price, English Patents, p.20.

¹⁰⁹Notestein, Winning the Initiative, p.31.

¹¹⁰Ibid, p.33.

him.

Instead, he often spoke for himself, and by doing so did nothing to advance his cause. James dissipated the Crown's prestige with his "long scolding speeches, his too frequent interference in the details of parliamentary business, his lack of dignity and tact, his extravagance, and his references to the divine right of kings".¹¹¹ His royal pronouncements ceased to carry the traditional weight, and when he talked of the prerogative he merely inspired Parliament to press its own claims.¹¹²

The claims for which Parliament fought so fiercely did not really constitute an attempt to extend that assembly's power. James's parliaments were merely asserting and maintaining constitutional principles and parliamentary rights which might otherwise have sunk into oblivion and disuse.¹¹³ Rather than attempt to create new institutions his parliaments spent a good deal of time defending privileges they considered already to be theirs. This explains why James's reign is marked by a dearth of legislative achievement. But the non-legislative accomplishments of the reign were significant, and for these accomplishments the monopolies, in their own perverse way, may share the credit.

¹¹¹David H. Willson, The Parliamentary Diary of Robert Bowyer, 1606-1607 (Minneapolis: University of Minnesota Press, 1931), p.XVIII.

¹¹²Notestein, Winning The Initiative, p.32.

¹¹³Prothero, Select Statutes, pp.LXII-LXIII.

THE EARLY OPPOSITION, 1606-1614

While the final and most significant chapter of the opposition to the monopolies was written in The House of Commons in 1621, James's two previous parliaments did not ignore patent abuses. The parliamentary opposition in the first half of the reign was strong but unorganized. In these early days the oppositionists used guerilla-type tactics, constantly dogging the King's sympathizers. The group which disagreed with the King had no established leaders, but did often place its confidence in men like Sir Edwin Sandys or Nicholas Fuller, whose resistance to James was outspoken and effective.¹ The tide of resistance was less clear in 1606 than at any time during the reign,² yet it was during this second session of James's first parliament that serious opposition to the monopolies first manifested itself.

¹Wilson, Bowyer's Diary, p.XX.

²Ibid, p.XXI.

In 1606 the House of Commons established a committee to review grievances and to decide which of them were fit to be submitted to the King for redress. But, before they could be submitted in the form of a petition, they had to be allowed as grievances by the House as a whole.³ On April 9, 1606, Nicholas Fuller, the lawyer who had won the famous 1603 Case of Monopolies, delivered to the Commons the grievances that the committee had designated as especially in need of correction. Figuring prominently on the list were several patents of monopoly. First among all grievances was the license for the selling of wines held by the Lord Admiral, Charles Howard. This license was in direct opposition to the fact that the Commons had repealed the laws of Edward VI allowing wine prices to be fixed. The Commons had also ruled that there should be no more dispensations or monopolies of taverns, or of retail wine sales. Nevertheless, some persons had taken advantage of outdated statutes or grants, or warrants from James, to increase the number of taverns and raise the price of wine. Furthermore, Elizabethan grants annulled by Parliament had been revived under the Great Seal. Under cover of these illegal grants great sums in fines and rents had been extorted from the King's subjects. The sale of wine had been introduced to places where it had never been

³Ibid, p.109.

sold before, and unruly alehouse keepers had been allowed to maintain establishments, thus increasing drunkenness and other disorders among the people. The House allowed the Wine patent as a grievance.⁴

Fifth on the committee's list of complaints was the Duke of Lennox's patent for inspecting and sealing the New Drapery. This grant had been made less than a year before, in September, 1605.⁵ Lennox's agents, it was alleged, often sold the seals for up to four times their value as prescribed in the patent. Before the discussion could proceed further, it was moved and passed that Lennox's counsel be heard.⁶ On the appointed day several specific charges were levelled against Lennox and his conduct of the patent. The patent was said to be grievous both in law and in execution. It was considered illegal for an aulnager to measure manufactured cloth goods, such as stockings and nightcaps. It was also illegal and unprecedented for fees such as those collected by Lennox to be paid by a subject to another subject. They should have been paid to the King. A further illegal practice was the levying of a twenty shilling fine on those who would not pay for the seals. As for the abuses in execution of the said patent, the patentees were accused of robbing men of their money and goods on the highway,

⁴Ibid, p.110

⁵Greene, (ed.), CSPD, VIII, p.233

⁶Willson, Bowyer's Diary, p.112.

and of seizing as forfeit goods not properly sealed.⁷

The Duke's counsel was unable to summon an effective defense in the face of these charges. He said that Lennox himself would agree for the patent to be tested in any "Court of His Majesty in Westminster Hall."⁸ This patent also was allowed as a grievance by the Commons.

A third grant which came in for criticism was the saltpeter patent. Although the abuses perpetrated in the search for saltpeter were truly bothersome to the people of the countryside, the saltpeter patent had a fairly defensible reason for existence. The desire to have the resources to make gunpowder within England was legitimate. Gunpowder imported from the continent was expensive, might be intercepted and seized on the high seas, and if during war-time the supply were cut off the results could be disastrous. Thus, for the purposes of national security Elizabeth had granted saltpeter patents.⁹ The practice was continued by James, who granted a patent in October, 1604, to John Evelyn, Ric. Harding, and Robert Evelyn to make saltpeter and to keep the King supplied with gunpowder for twenty-one years.¹⁰ This grant was later revoked

⁷Ibid, p.129.

⁸Ibid.

⁹Lipson, Economic History, III, p.358.

¹⁰Greene (ed.), CSPD, VIII, p. 156.

and the same terms were granted in May, 1607, to the Earl of Worcester.¹¹

The saltpeter patentees and their agents were authorized to search and dig anywhere, including private homes. Nor were these seekers inclined to be careful in their searches, which went on apace regardless of the circumstances. After years of abuse an investigation into the matter produced a report on the excesses of the so-called saltpetermen. Among the places they dug, seldom filling the holes they made, were parlors, bedchambers, churches, dove-houses, barns and malting houses. These gentlemen were not above digging beside or under sick-beds, child-beds, and death-beds, and sometimes undermined the walls of a house.¹² The Commons of 1606 complained that although the present patentees had made great quantities of saltpeter, little of it had come into the possession and use of the King.¹³ According to Sir Robert Johnson, Officer of the Ordinance, no saltpeter or powder had recently come into the King's store. Johnson proposed that all materials of war should be transported only under the privy of James. The House of Commons approved saltpeter as a grievance, and admonished

¹¹Ibid, p.356.

¹²Lipson, Economic History, III, pp.358-359.

¹³Willson, Bowyer's Diary, p.131.

that particular care should be paid to unorderly digging in houses, since this was a necessary part of obtaining saltpeter and had to be continued.¹⁴

These complaints, along with other grievances of various kinds, were submitted to James, and elicited a reply on March 18, 1606. The reply was read by the House Speaker, Sir Robert Phelips. James said that Commons had embarked on a course of complaints contrary to his expectations.¹⁵ Nevertheless, he would gladly add his authority to that of Parliament in the correction of laws which "come short or are defective".¹⁶ If need be, he was willing to act along with the advice of the Privy Council, or to turn the grievances over to the courts of justice. The King hoped that Parliament would confine itself to the following grievances: monopolies, hindrances to justice, oppression and corruption.¹⁷ This reply held out the hope that James might grant some kind of redress, but this hope was dashed when in a later message concerning complaints he flatly told the Commons that consideration of the petition of grievances would be deferred to a future session. Since it had granted James supplies, the Parliament was disgruntled at this lack of cooperation. In fact, James did not seem particularly interested in what

¹⁴Ibid., p.132.

¹⁵Ibid., pp.83-84.

¹⁶Ibid., p.84.

¹⁷Ibid.

was happening in London. According to Zorzi Giustinian, The Venetian ambassador, James was perpetually occupied with country pursuits, and had even moved the court to Greenwich. This detachment was annoying not only to diplomats, but also to the English people, who wanted to see their king now and then. Their discontent was underscored by a complaint found fastened to the door of the Privy Chamber. It alleged that James's laxness was leaving his ministers free to prey upon the subjects of the realm. The King was admonished to avoid giving his people further reason "for acting so that he should have to complain of them".¹⁸

Thus the opposition to James made itself known as early as 1606, but it produced no results. All James's promises to redress grievances or submit them to the courts proved empty. By 1610, when the fourth session of his first parliament was ready to convene, it had become obvious that to make any progress toward redress of grievances the Commons would have to renew its protests. The attitude of the Commons in 1610 was indicated by a speech given before the House by Nicholas Fuller. His speech made it clear that The House of Commons was becoming less tolerant of the royal prerogative. Fuller seized upon the example of the monopolies to show that the common law preserved an Englishman's right in his lawful

¹⁸Horatio F. Brown (ed.), *Calendar of State Papers, Venetian Series* (London: "Norfolk Chronicle" Co., Ltd., 1900, 38 vols.), X, p.353.

trade or occupation just as it did in his lands or goods.¹⁹ The subjects had a right to expect the King's justice, to which the King must yield "notwithstanding any pretense or show of prerogative".²⁰ What good, asked Fuller, is the authority of law, if things done "by color of prerogative"²¹ and relating to the "goods, lands and liberties of the subjects"²² cannot be examined and duly censored by the rules of law and the authority of the common law judges? Fuller went on to cite several of the cases he had won against patents of prerogative. One of them concerned a printer's violation of a printing monopoly. Fuller was able to win the case because the prosecutor refused to discuss the legality of the patent since that would have touched on the King's prerogative. Arguing that when the lands, goods or liberties of a subject were at stake anything was liable to discussion, Fuller spoke boldly and won.²³ The lawyer also brought up the matter of James's attempts to make money from the monopolies. The laws of England prevented the King from meddling with the property or goods of his subjects, and so he had always had to rely on Parliament for funds in time of war

¹⁹Elizabeth Read Foster, (ed.), Proceedings in Parliament, 1610 (New Haven: Yale University Press, 1966, 2 vols.), II, p.152.

²⁰Ibid., p.156.

²¹Ibid.

²²Ibid.

²³Ibid., pp.156-157.

or other need. Henry V had authorized an officer to measure linen for the public's protection, and to receive for this service a fee. The courts voided the patent because only Parliament could legally charge the people's goods.²⁴ Thus any patent grant which included a kickback to James was illegal.

Fuller finally concluded that, as shown by the case of the printing monopoly and other precedents, the subject clearly had the right to maintain his legitimate interests against the King, unless such recourse be denied by law. The common laws, said Fuller, "measure the King's prerogative as it shall not tend to take away or prejudice the inheritance of the subject".²⁵ Fuller also termed invalid all precedents cited in support of the monopolies. Some other members of the House backed up Fuller's views. The most notable of these was Heneage Finch, who held the decidedly radical opinion that the prerogative of the King could be restrained by act of Parliament. Some acts of parliament, he maintained, are made as advice to the King. They do not bind the King, but when he grants a patent contrary to one of these acts, then that patent is void. A patent grant not contrary to the act is allowed to stand.²⁶

²⁴Ibid, p.157.

²⁵Ibid, p.158.

²⁶Ibid, p.241.

The 1610 Commons, definitely not in a conciliatory frame of mind, pursued the same patents it had found offensive in 1606. In 1606 James had promised that the Duke of Lennox's patent would be judged in the courts of law, and that all abuses would be punished to the satisfaction of those affected. Yet the complaints continued, and it became obvious "that not only the said letters patents are still kept on foot, and the validity of them undecided by judgment, but disorders in their execution are so far from being reformed that they multiply every day to the great grievance and oppression of your Majesty's subjects."²⁷ The Commons expressed the hope that James would act upon his earlier resolution and bring the patent to judgment because it affected all his subjects. Until a decision could be reached The House wanted Lennox's rights suspended so that he could not further annoy the people and cause them to have to restate their grievances.²⁸

Another grievance from 1606 was the wine monopoly. Lord High Admiral Charles Howard was licensed to sell wine to whomever he judged acceptable. James had said that the license was lawful. The Commons, however, maintained that the license was based on a law now obsolete and unobservable. Commons had expected James to recall this patent before 1610, but he had not done so.²⁹ The

²⁷Ibid, pp.268-269.

²⁸Ibid.

²⁹Ibid, p.270.

petition concerning the wine monopoly stated that it was contrary to the Kingdom's laws for James to give a subject penalty, dispensation or benefit of a law made by parliament for the public good. Parliament had ruled that dispensations or monopolies of taverns or retail wine sales were illegal. In recent reports His Majesty's judges had supported the Commons' stand on this matter. On these grounds the King was enjoined to recall the patent.³⁰

The House of Commons delivered a Petition of Grievances to James on July 7, 1610. The petition, which had been passed by The House three times like any other bill, had been prepared by a committee headed by Sir Edwin Sandys.³¹ James appeared in the House of Lords on July tenth to answer the petition. He came personally, he said, because the grievances were of his doing and so should be answered by him, though only God could take him to account for his kingly deeds. Also, it is best to hear glad tidings from those who did them, and only he could give redress. James first announced his intention to maintain anything, grievance or not, which touched his honor. Parliament had no right to ask him to part with these. In matters relating to his profit, the King said that the judges had assured him that his acts were lawful, and so the Lord Treasur-

³⁰Ibid., p.271.

³¹Ibid., I, p.XV.

er would speak for him in this regard.³² James then spoke of the patents. He promised that The Newcastle Coal prices would be reduced.³³ The Newcastle Coal monopoly of London had been approved by the monarchy on condition of receiving a tax on exportation. Because it had been authorized by the Crown, the Privy Council could do nothing to stop the abuses which arose from this monopoly. Coal output was restricted, the price rose from four to nine shillings a chaldron, and the quality of the coal declined.³⁴

In regard to the wine patents, which had been protested a second time, James said that after the expiration of all wine patents then in effect, including Howard's, no more would ever be issued. He would not acknowledge, though, that the wine patents had been a grievance. Others had convinced him, he said, that the Lord Admiral had done such excellent service that his patent had been an honor to the country.³⁵

In regard to Lennox's patent, James said that he had asked the judges to make a swift decision on its legality. He also promised that forever hereafter he would be content for "me and my issue never to grant any such things without the consent of parliament".³⁶ The King concluded his comments on the monopolies by beg-

³²Ibid, p.130.

³³Ibid, p.133.

³⁴Unwin, Studies, p.327.

³⁵Foster, Proceedings, I, p.133.

³⁶Ibid.

ging the parliament to make it unlawful for men to petition him for something he could not legally grant.³⁷ This was an admission of his inability to turn suitors away. Finally, James turned to a subject which really interested him. He reminded parliament that it had not yet granted him supplies, and urged it to hasten to this task.³⁸ Late in July James once again promised to redress grievances attributable to Lennox's patent. Parliament was then prorogued until October 16, 1610.³⁹ Yet, by November sixteenth, no action had been taken against Lennox and other offensive patentees.⁴⁰ Once again James had failed to make good his promises.

That the Commons was dead serious about remedying the monopoly situation was demonstrated by the case of Sir Stephen Proctor. While this case is interesting and significant only as an example of action taken against an offensive patentee, it did foreshadow the revival of impeachment in 1621. Proctor was accused of compounding with violators of penal laws, of taking bribes and rewards, and of tormenting many poor people.⁴¹ Furthermore, he illegally assumed the authority of a Justice of the Peace and searched houses and coffers, often confiscating the money and goods of sub-

³⁷Ibid.

³⁸Ibid, p.134.

³⁹Ibid, II, p.295.

⁴⁰Ibid, p.336.

⁴¹Ibid, p.412.

jects.⁴² Salisbury said that he had never known Sir Stephen "to deal honestly in any matter".⁴³ A bill was drawn against Proctor which stated that all "letters patents, commissions and warrants heretofore made to the said Stephen Proctor by his Majesty of or for any receivership, stewardship, or other matter concerning his Majesty's revenues . . . shall stand and be utterly void".⁴⁴

Proctor was degraded from the knighthood, forbidden to hold office, could never come near the Crown, and his lands and goods were to be sold to compensate those he had damaged.⁴⁵ This proposed punishment was very similar to the penalty laid upon Sir Giles Mompesson when he was impeached in 1621. On July 21, 1610, the Lords and The Commons held a conference on the Proctor bill, which had passed the Commons. The Lords, however, rejected the measure and so it was referred to the next session. With the assent of James and both Houses, Proctor was exempted from the general pardon so that he could be challenged again.⁴⁶

Despite his failure to alleviate monopoly abuses, James did seem interested in assuring the public of his good intentions when he issued the Book of Bounty. The second section of the Book of Bounty has this heading:

⁴²Ibid, p.413.

⁴³Ibid, p.414.

⁴⁴Ibid, p.413.

⁴⁵Ibid, pp.413-414.

⁴⁶Ibid, p.386.

A memorial of those special things for which we expressly command that no Suitor presume to move us being matters either contrary to our Laws, or such principal Profits or Our Crowne, and settled Revenue, as are first to be wholly referred to our own use, until our estate be repaired.⁴⁷

The list of "things contrary to our laws"⁴⁸ contained three items of particular interest. The first forbidden item was monopolies. The second was grants giving the patentee the benefit of penal laws, or the power to dispense with the law or compound with offenders. Also taboo were licenses granting relief from customs duties and from export and import laws.⁴⁹ Undoubtedly, James later regretted the issuance of the Book of Bounty. Parliament seized upon its pronouncements against monopolies and similar grants as the basis of the Statute of Monopolies of 1624.⁵⁰

In 1610 James showed two faces in regard to the monopolies. On the one hand he publicly declared his abhorrence of them. On the other, he refused to cooperate with the Parliament's very reasonable demands for the redress of flagrant abuses. The events of 1610 left the monopoly situation basically unchanged. Both James and the Commons were as determined as ever to have their own way.

In 1614 James once again found himself in dire financial

⁴⁷Gordon, Monopolies by Patents, p.175.

⁴⁸Ibid.

⁴⁹Ibid.

⁵⁰Ibid., p.8.

straits, and so was constrained to call a parliament, his second. This was the famous Addled Parliament, which lasted only two months. It convened on April 5, 1614.⁵¹ During this brief period the monopolies once again came under fire. They were discussed at length, and designated by Sir John Eliot as one of the two principal causes of commerical decline.⁵² Indeed, the Parliament of 1614 might have acted against the monopolies had it not been dissolved first. Yet, while The Addled Parliament did not act against the monopolies, neither did it replenish the royal Exchequer. Desperate for money, James once again turned to the monopolies as a source of revenue.⁵³ Predictably, the financial returns were slim while the abuses multiplied, thereby setting the stage for the downfall of monopolies and monopolists in 1621.

⁵¹Harold Hulme, The Life of Sir John Eliot (New York: New York University Press, 1957), p.27.

⁵²Ibid., p.44.

⁵³Samuel R. Gardiner, History of England, 1603-1642 (London: Longmans, Green and Co., 1883, 10 vols.), IV, p.21.

THE PARLIAMENT OF 1621 and THE STATUE OF MONOPOLIES

Not having been subsidized since 1610, James in 1621 once again found himself faced with a desperate financial situation. As in 1614, his only recourse was to call a parliament. James could not have expected that this parliament would be a cooperative one. In the nearly seven years since the dissolution of the Addled Parliament the number of monopolies had increased steadily. In 1621 there were allegedly 700 of them.¹ Furthermore, the new breed of independent parliamentarians would be in full control of the House of Commons. That the monopolies were sure to be vigorously assailed under these circumstances was foreseen by the King's advisers in their preparations for the parliament. Hoping to avoid trouble, a group of judges headed by Sir Francis Bacon, the Lord Chancellor, advanced a plan whereby the most obnoxious patents would be withdrawn before

¹Hill, Century of Revolution, p.33.

the Commons could complain of them.² Those remaining in force would be readily relinquished when protested, and in no case would any patent be defended against public opinion.³ On December 14, 1620, these ideas were put before the Privy Council.⁴ Even though many councillors favored the plan, it failed to win approval due to the influence of Buckingham, who obstinately defended the patents when he could just as easily have ended them.⁵ Instead, the Council ruled that the patents should remain to be protested.

When they were challenged, James would immediately grant redress. This decision was a mistake because it allowed the credit for uncovering patent evils to go not to the King and the Council but to the Commons. Had Bacon had his way, the first two patents to be attacked, Mompeyson's for inns and Villiers's for alehouses, would already have been swept away.⁶

Parliament convened on January 30, 1621. The King was interested primarily in a subsidy, but the House of Commons was of another mind. For the first two weeks of the session the Commons tried to get into foreign affairs, but was coldly rebuffed. So, when on Feb-

²David H. Willson, The Privy Councillors in the House of Commons, 1604-1629 (Minneapolis: The University of Minnesota Press, 1940), pp.41-42.

³James Spedding, An Account of The Life and Times of Francis Bacon (Boston: Houghton, Osgood, and Company, 1878, 2 vols. , II, p.424.

⁴Willson, Privy Councillors, p.42.

⁵Ibid., p.43.

⁶Spedding, Bacon, II, pp.424-425.

ruary seventeenth James offered to meet the House halfway on any domestic grievances it might want to discuss, his proposal was received with open arms.⁷

Just two days later William Noy opened the attack on the monopolies. In a speech before the Commons he said that the King could not be held to blame for the bothersome patents then in existence. They had always, said Noy, been referred to the Commission to examine Suitors, which had to approve a patent application before it could become law. He proposed that the referees, as the Commissioners were known, be brought to the House of Commons and examined for their actions in approving the various patents.⁸ The most prominent referee was Francis Bacon. Noy was not, in fact, the first member to speak of the referees. Earlier in February Sir Edward Sackville had expressed the opinion that, since the referees had certified the patents, they should be examined so that they might "receive the blame and the shame" of their deeds.⁹

Noy's proposal to examine the referees was seconded by Sir Edward Coke, the greatest common lawyer of the seventeenth century and a Privy Councillor as well. Coke's legal knowledge and experience had won him the esteem of his largely inexperienced colleagues,

⁷Gardiner, *History*, IV, p.39.

⁸Wallace Notestein, Frances Relf, and Hartley Simpson (eds.), *Commons Debates, 1621* (New Haven: Yale University Press, 1935, 7 vols.), IV, pp.78-79.

⁹Spedding, *Bacon*, II, p.426.

who were surprised and delighted at having a Privy Councillor support a proposal like Noy's, which would call into question some of the King's highest officials.¹⁰ His support for Noy's motion demonstrated Coke's almost fanatical devotion to the common law, which he regarded as the supreme law. In his years on the Common Pleas and King's Bench (1606-1616), he had come into conflict with James, who rated his own royal prerogative above the common law. The turmoil of these years eventually led Coke to ally with, and become the leader of, the parliamentary opposition.¹¹ Coke's loyalty to the common law, though somewhat extreme, was reflective of a deep-seated national feeling. During the Tudor Period reverence for the common law had increased among the people because the sovereigns themselves seemed to revere it. When aggrieved, citizens and parliament had appealed to the law. Those who pitted the common law against the Crown met with little success, but nevertheless there was a growing feeling that some common law principles might provide a restraint on the arbitrary exercise of power.¹² The success of the Commons in opposing the monopolies reflected and justified this faith.¹³

¹⁰Gardiner, History, IV, p.48.

¹¹Sir William Holdsworth, A History of English Law (London: Methuen and Co., Ltd., 1923, 14 vols.), V, pp.428-429.

¹²Ibid, p.435.

¹³Ibid, p.436.

Yet William Noy's proposal to question the referees was not finally adopted. Having made the decision to examine the monopolies in general, the Commons turned to a more obvious and accessible aspect of the problem. On February twentieth the patent for inns held by Sir Giles Mompesson was sent to the committee of grievances.¹⁴ Here was a glaring evil whose investigation would not grate on the King's nerves, as an inquiry into the actions of the referees almost certainly would have.

The notorious Mompesson, a member of the Commons, had been granted the patent for inns in 1617. He was married to Catharine, the daughter of Sir John St. John of Lydiard Tregooze. Catharine's older sister, Barbara, was the wife of Edward Villiers, Buckingham's half-brother. Thus it was that Mompesson came to suggest his scheme to the favorite, and to get his help in approving it.¹⁵ Actually, the idea itself seemed sound enough to require little aid. Mompesson proposed to bring innkeepers under control by establishing a commission with the power to grant licenses to inns. Such an arrangement would protect the traveller from the exorbitant prices so often charged for food and lodging. Since it was plain that justices of the peace did not have the right to award such licenses, the plan was based on the justices of assize, the common law judges. Their

¹⁴Spedding, Bacon, II, p.426.

¹⁵Lee and Stephens (eds.), DNB, XIII, pp.588-589.

function would be to validate with their signatures licenses drawn up by the commissioners. But even their authority was in doubt, so the matter was referred to Bacon, who was at that time attorney general. Not wanting to make the decision alone, Bacon requested the collaboration of three other judges. This panel returned a report unanimously favoring the plan.¹⁶ Several other independent officials approved the plan for its convenience, and even Coke admitted that it was good in law.¹⁷ Baron Ellesmere, the Lord Keeper of the Seal, was dying and refused to pass the patent, forcing James to personally order the seal to be affixed to the document.¹⁸ The patent, which was granted in March of 1617, authorized Mompesson to keep one-fifth of the fines and rents collected from the licensing of inns, with the rest going to the King. As a further compensation for his labor, Sir Giles was appointed Surveyor and Licensor of Inns.¹⁹

It was soon apparent that no one but Mompesson and his band would derive any benefit from this monopoly. The patentees were interested solely in enriching themselves. They were responsible to no one and sold licenses to any innkeeper who could pay the price,

¹⁶Gardiner, History, IV, pp.2-3.

¹⁷Ibid, pp.3-4.

¹⁸Ibid, p.3.

¹⁹Greene, (ed.), CSPD, VIII, p.439.

regardless of how indecent the inn he kept might be. The many abuses were made abundantly clear in the course of the House's investigation. On February nineteenth Sir Edward Giles made these preliminary charges against Mompesson:

- 1) Any man who takes in his neighbor's horse on market day is questioned and fetched by a quo warranto.
- 2) Every man setting up even a post at his door loses his prescription.
- 3) Travellers are burdened by high prices.²⁰

Mompesson was ordered to bring his patent to the Commons at two o'clock the next day, February twentieth. On this day Mompesson's examiners immediately swamped him with accusations. In asking the House to consider what motives Mompesson might have had in seeking the patent, Sir William Stroude said that "there appears no other cause but his own private gain".²¹ John Drake told of an inn in which a notorious murder and robbery were to have been committed. Those involved were indicted for conspiracy and imprisoned, but the innkeeper merely secured a new patent and kept his disorderly house open. Justices of the peace in the area were powerless to end the abuse.²²

²⁰Notestein, Relf, and Simpson (eds.), Debates, VI, p.252.

²¹Ibid., p.256.

²²Ibid.

A typical method of extortion was for an agent to trick an innocent alehousekeeper into becoming an innkeeper. On February twenty-first Richard Weston, member for Lichfield, told this story of an innocent man named Cooke and an agent named Ferret. Cooke, an alehousekeeper of fifty-eight years standing, was approached by Ferret, who asked for lodging. Cooke replied that he had never entertained horse, nor did he have room for the man. Claiming to be in great distress and in need of help, the agent begged to be taken in for the night. Falling for the ruse, the honest Cooke finally agreed, whereupon Ferret immediately accused him of keeping a hostelry without license. The alehousekeeper was forced to go to London and spend a great deal of money before being cleared of these false charges.²³

Sir Edward Coke then brought in a report in which he stated that the inn patent

showed that as it was ill in the project so it was worse in the execution. It was a commission of the first impression without any precedent. And though the ground were a reformation of disorders in inns, it proved rather a deformation.²⁴

The most grievous of the nine offenses for which Coke cited Mompesson were:

²³Ibid, II, pp.113-114.

²⁴Ibid, p.112.

- 1) Circumventing justices of the peace by getting justices of assize to sign his licenses.
- 2) Causing a proclamation to go out for a private cause, namely point number one above.
- 3) Using antiquated laws to vex the populace.
- 4) Selling licenses to vicious alehousekeepers.
- 5) Worst of all, threatening a justice of the peace and passing off as legitimate one license signed by a beggar and another signed by a drunkard.²⁵

After hearing these charges it was unanimously agreed by the House that Sir Giles Mompesson constituted a grievance to the Commonwealth.²⁶ The referees were mentioned once again when Sir Francis Seymour opined that they could not be blameless, but that it was up to the House to decide whether or not to consider their conduct.²⁷

Following the investigation of Mompesson the House turned its attention to the patent for alehouses. The patentees were ostensibly Dixon and Almon, with court hangers-on like Christopher Villiers in the background. These patentees also were out to collect all the booty they could, selling licenses to alehousekeepers, unruly or not, who could afford to buy permission to break the law. Dur-

²⁵Ibid., pp.112-113.

²⁶Ibid., VI, p.257.

²⁷Ibid., II, p.113.

ing the discussion of this patent the name of Sir Francis Michell frequently arose. He was accused of having used his powers to support corruption.²⁸ In answer to these charges Michell handed in a defense of his actions in which he said that his conduct had been approved by lawyers of good standing, that he had acted without malice, and that the fact of his having to appear before the House should be punishment enough.²⁹ The Commons wasn't listening. Michell's claim that he had not become acquainted with the patent until after its approval was true enough. He was not guilty of projecting the patent, but he had played a major part in all of the abuses.³⁰ Michell got his fair share of the loot and wrote letters authorizing extortions.³¹ He was also guilty of increasing his victims' cooperativeness by saying that what he wanted was also the will of the King.³²

After hearing of these deeds, Coke moved that Michell be sent to the tower. Smelling blood, other members of the House shouted for more severe punishment. It was suggested that he be degraded from the knighthood and exempted from the general pardon at the end of the session. In the end, no additional penalties were placed on Michell, and he was merely sent to the Tower, as though that

²⁸Gardiner, History, IV, p.42.

²⁹Notestein, Relf, and Simpson (eds.), Debates, VII, pp.500-501.

³⁰Ibid, VI, p.265.

³¹Gardiner, History, IV, p.42.

³²Notestein, Relf, and Simpson (eds.), Debates, II, p.128.

were not indignity enough.³³ The Commons' treatment of Michell was very high-handed and directly opposed to the laws of England. In the heat of battle Coke must have momentarily misplaced his legendary store of knowledge. When a doubt was raised as to the Commons' right to imprison Michell for offenses not committed against the House itself, Noy and William Hakewill were sent to the Tower to look for precedents.³⁴ They returned to tell the House that it had overstepped its authority. The Commons had the right to deal judicially with those who had offended against the House, but could not deal with those who had offended against the State, as had Michell. Michell was brought back from the Tower and dealt with by the Lords, as prescribed by law. The case of Michell made it clear that to punish Mompesson, whose offenses amounted to a general grievance, the Commons and Lords would have to act in concert against him.³⁵ Such joint action would constitute an impeachment.

Seeing what had happened to Michell, Mompesson ceased to resist and acknowledged full blame for the obnoxiousness of the inns patent. The Commons did not reply. On the twenty-seventh of February Coke brought in more charges. Not only had Mompesson projected the inns

³³Gardiner, History, IV, p.42.

³⁴Spedding, Bacon, II, p.429.

³⁵Ibid, p.432.

patent; he had also bothered 3320 innkeepers with obsolete laws. Furthermore, a large number of the inns licensed by Mompesson had previously been closed down as disorderly. Even more charges were forthcoming against the unfortunate Mompesson, and on March third the Commons sent officers to apprehend him.³⁶ Sir Giles excused himself to his wife's closet, where his guards were hesitant to follow, and escaped through a window to the continent.³⁷

In the face of Mompesson's escape, the Commons had to be content with impeaching the scoundrel in absentia. Impeachment, which had to be done jointly by the Commons and Lords, had not been used since the case of Lord Stanley in 1459 during the reign of Henry VI.³⁸ In reviving it Parliament asserted its position as the rightful protector of England against offenders such as Mompesson, "The king hath his privie Counsel and learned Counsel, but the kingdom hath no counsel but parliament."³⁹ Impeachment was the natural weapon of James's parliaments. It was used in 1621 to make even the greatest mininsters of state responsible to the law. Indeed, impeachment can be said to have made substantial contributions to the cause of constitutional government. It established the doctrine of ministerial responsibility to the law, applied this to all ministers of the Crown, and helped to maintain the supremacy of the

³⁶Gardiner, History, IV, pp.43-44.

³⁷Spedding, Bacon, II, p.434.

³⁸Tanner, Constitutional Documents, p.321.

³⁹Notestein, Relf, and Simpson, (eds), Debates, V, p.185.

law over all.⁴⁰

Precedents were cited in the House for dealing with those who did injury to the Commonwealth through their exploitation of patents of monopoly. During the reign of Richard II a York merchant named Ellis abused a patent so heavily that other merchants complained to the Commons. The Commons passed the complaint to the Lords, who ruled that Ellis should be sent to the Tower and fined at the King's discretion.⁴¹ Dealt with more severely during the reign of Edward III was Richard Lyon, who had abused a dispensation to transport staple commodities. He was sent to the Tower, barred from holding office, was never to come near the King, and was to be disenfranchised at the King's pleasure.⁴²

In the proceedings against Mompesson he was charged with the abuse of three different patents of monopoly. The first was the familiar patent for inns. The second was a patent for gold and silver thread, which was said to be "portentous in pursuit and execution most grievous".⁴³ The idea had been to establish the manufacture of gold and silver thread in England. The patentees agreed to import £5000 of bullion a year so that England's supply

⁴⁰Holdsworth, History, I, p.382.

⁴¹Notestein, Relf, and Simpson (eds.), Debates, VI, pp.307-308.

⁴²Ibid, p.308.

⁴³Ibid, p.41.

would not suffer. Mompesson was not the patentee but rather a commissioner with the power to punish those who infringed on the actual patentee's rights. He sorely abused his power, often throwing offenders into prison and announcing his intention to let them rot there.⁴⁴ Mompesson projected the third patent for which he was cited. He had convinced James that some Crown lands might improperly be in private hands. The King empowered Mompesson to seek these out and to fine any who would not yield their property on demand.⁴⁵ This was potentially the most dangerous of all the patents and aroused a great deal of indignation, for no one's land would be safe from a scoundrel possessing such powers.

On March 26, 1621, judgment was delivered against Sir Giles Mompesson. He was to be degraded from the knighthood, imprisoned, and was never to come within twelve miles of the court. His lands and goods were confiscated, and he was fined £10,000. He was to remain forever in outlawry, to be barred from office, and was never to be included in the general pardon. As an afterthought James banished him forever from the realm.⁴⁶

The earnestness of the Commons in dealing with Mompesson shocked Buckingham into the realization that he might easily fall into trouble himself. He could not possibly deny his intimate as-

⁴⁴Ibid, p.42.

⁴⁵Ibid, pp.42-43.

⁴⁶Ibid, p.86.

sociation with the patents of Mompeyson, but he could shunt the blame off on someone else before the investigation reached him. It did not seem likely that Buckingham would be investigated, since that would have been tantamount to attacking the honor of the King. Nevertheless, the favorite wasted little time in attempting to extricate himself from a bad situation. On March third, the day Mompeyson escaped, Buckingham made a speech before the House of Lords at which Coke was present.⁴⁷ Buckingham admitted having introduced Mompeyson to the King and having supported his patents, thinking they were for the good of the country. When he had recently asked Mompeyson about the inns patent, the latter had protested that there were no abuses. Unwilling, as he said, to desert a friend in adversity, Buckingham concluded that if the patents were indeed a source of evil, then the blame must lie with the referees.⁴⁸

The question of the referees and their role in the affairs of the monopolies would soon have been broached even if Buckingham had remained silent. It would have been stupid and hypocritical for Parliament not to have examined the high officials who had sanctioned the abuses of Mompeyson and others. The security of the people depended on rooting out this evil in high places, if it were

⁴⁷Gardiner, History, IV, p.45.

⁴⁸Notestein, Relf, and Simpson (eds.), Debates, II, p.161.

there.⁴⁹ Since Noy had unsuccessfully proposed to examine the referees there had been only one further call to investigate them. It had come from Lionel Cranfield, who as a practical businessman opposed the monopolies because they disarranged the course of trade.⁵⁰ Cranfield realized as well that corruption of the type engendered by the monopolies was a hindrance to the government and so helped expose it and supported corrective measures. Yet he was also the Lord Treasurer, and as a Crown man was active in the defense of the King. He insisted on the responsibility of the referees⁵¹, thereby sacrificing the royal ministers on the altar of the King's honor. Ironically, Cranfield himself was impeached in 1624. On February twenty-fourth and twenty-seventh Cranfield pressed for an investigation, but the Commons did not respond. But he would soon have his wish. On March eighth the complaint against Mompeyson was sent up to the Lords, and along with it a demand for an inquiry into the referees.⁵²

The attack on the referees posed quite a problem for James. The revival of impeachment, especially when directed at some of his highest officials, was a direct challenge to the whole concept of monarchy he had inherited from the Tudors. Not within memory had a minister been regarded as responsible to anyone but the monarch.⁵³

⁴⁹Gardiner, History, IV, p.45.

⁵⁰Ibid, p.46.

⁵¹Willson, Privy Councillors, p.250.

⁵²Gardiner, History, IV, p.48.

⁵³Ibid.

Thus, the King resolved to resist the encroachments of Parliament. The Commons had scheduled a conference with the Lords for March ninth. In an attempt to forestall this meeting James sent a personal message to the Commons. The messenger was cordially received, but the House refused to postpone or cancel the conference.⁵⁴ At a conference with the Lords on March eighth the Commons had presented its case against Mompesson to the Lords. The presentation of the three patents upon which the House was basing its case had been entrusted to three leading members. Thomas Crew had the Patent for Inns, Heneage Finch the Gold and Silver Thread Patent, and William Hakewill the Patent for Concealments. Sir Edwin Sandys expanded their presentations, and Coke gave precedents and made the conclusion.⁵⁵ This conference, however, was not successful because Crew, Finch and Hakewill failed to name the referees for the respective grievous patents.⁵⁶ Coke was incensed, and so a new conference was held March ninth at which the names of the referees were satisfactorily aired.⁵⁷ The March ninth session was an obvious attack on the referees, and so James understandably but futilely tried to avert it. His failure merely underscored the Commons's determin-

⁵⁴Ibid, p.50..

⁵⁵Spedding, Bacon, II, pp.434-435.

⁵⁶Ibid, p.436.

⁵⁷Ibid, p.439.

ation to have its way in this matter.

The referees were summoned, and at a conference Bacon and Viscount Mandeville were treated rather harshly, causing Buckingham to once again become alarmed. If the referees were not immune, then he might well be the next target. He began to pressure James to dissolve the Parliament. But then he was set straight by John Williams, the shrewd Dean of Westminster, who advised the favorite not to fight the current but to swim with it.⁵⁸ Accordingly, Buckingham turned on all the monopolists, including his brothers Christopher and Edward Villiers, saying that "the same father who begot them that were the offenders begot a third that would get them to be punished".⁵⁹ The conversion of Buckingham was a boon to the Commons. It proceeded with the Bill of Monopolies and the impeachment of Mompesson and made no further mention of the referees. The right to question high state officials had been won, and there was no reason to needlessly alienate James by pursuing it. More pressing was the need to pass a bill that would prevent any minister from ever again possessing such authority.⁶⁰

Lord Chancellor Bacon was subsequently impeached, but not on the basis of his conduct as a referee. Yet there can be little

⁵⁸Gardiner, History, IV, pp.50-51.

⁵⁹Notestein, Relf, and Simpson, (eds.), Debates, IV, p.149.

⁶⁰Gardiner, History, IV, pp.54-55.

doubt that bitterness over his approval of the patents helped to hasten Bacon's downfall.⁶¹ His case marked the beginning of a trend whereby counsellors or officers of the Crown who advised the King unconstitutionally were taken to task by either the courts or assemblies of estates.⁶² Bacon was finally impeached on the charge of accepting bribes from those whose cases he decided. He did in fact accept gifts and money, but there is little evidence that they influenced his decisions.⁶³

The Parliament of 1621 did not pass a bill against the monopolies. Toward the end of the year the Commons sent a bill to the Lords, who rejected it. The bill would have provided a general prohibition on future monopoly grants of nearly all types. Many in the House of Lords favored correcting past and present grievances, but thought that to provide for the future, as this bill purported to do, would be an infringement upon the King's prerogative. Others thought the King would find the bill's generality offensive. They believed that only specific abuses should be dealt with. Furthermore, such a bill would show James in an unfavorable light, perhaps causing the people to think him lax in redressing grievances. Some Lords believed that the bill was perfectly proper and should be approved.⁶⁴ While sen-

⁶¹Gardiner, History, IV, p.65.

⁶²Spedding, Bacon, II, p.443.

⁶³Gardiner, History, IV, p.81.

⁶⁴Samuel R. Gardiner, Notes of the Debates in the House of Lords, 1621 (Westminster: J. B. Nichols and Sons, 1870, pp.102-104.

timent favoring a monopoly law of some kind seemed to be strong, disagreement over different aspects of the 1621 measure doomed it to defeat. The Lords did appoint a committee of eight to "set down the heads for a new bill touching monopolies".⁶⁵ It was decided to hold a conference to tell Commons why the bill had been rejected, and to advise them in drafting a new law. It was highly unusual for the Lords to account so quickly for the rejection of a bill, indicating that they, too, attached great importance to the monopoly question.⁶⁶

Despite its failure to legislate against the monopolies, the accomplishments of the Parliament of 1621 were real and important. This Parliament stood up to the arbitrary power of the monarchy and won a resounding victory. It asserted the right of the people to have redress against royal agents and officials, and paved the way for the Statute of Monopolies of 1624, which gave statutory force to these principles of redress. These achievements constituted a telling blow struck in the cause of constitutional government.

The Statute of Monopolies was passed by the House of Lords and then by the House of Commons in May of 1624. This law was the most important legislative achievement of James's reign.⁶⁷ A heading

⁶⁵Ibid, p.105.

⁶⁶Ibid, p.106.

⁶⁷Price, English Patents, p.33.

attached to the Statute called it "an act concerning Monopolies and dispensations with penal laws and the forfeitures thereof".⁶⁸ The Statute of Monopolies is divided into fourteen sections.

Section number one explains from whence the Commons and Lords drew their justification for presuming to pass such a law. It states that in 1610 in the Book of Bounty James did "publish in print to the whole realm and to all posterity that all grants of monopolies",⁶⁹ of benefit of penal laws, of dispensations, and of the right to compound for forfeiture were "contrary to your Majesty's Laws".⁷⁰ Furthermore, James had expressly commanded that "no Suitor should presume to move"⁷¹ him for a grant of that sort. But even though James had thus declared monopolies and the like to be unacceptable, many such grants had been unlawfully obtained "upon misinformations and untrue pretenses of public good . . . to the great grievance and inconvenience"⁷² of the subjects. This being the case, the Commons and Lords thought it proper to take steps to remedy the situation. Thereupon, the law declared utterly void

all monopolies and all commissions, grants, licenses, charters and letters patents heretofore made or granted, or heretofore to be made or granted . . . for the sole buying, selling, making, working, or using of anything within this realm or the dominion of Wales.⁷³

⁶⁸Ibid., p.135,

⁶⁹Ibid.

⁷⁰Ibid.

⁷¹Ibid.

⁷²Ibid.

⁷³Ibid.

Grants giving to the patentee the powers of promising benefit of a law not yet judged and of acting contrary to "the tenor or purport of any law"⁷⁴ were declared to be of no effect and utterly void. "All proclamations, inhibitions, restraints, [or] warrants of assistance"⁷⁵ tending to erect or strengthen any of the above forbidden categories were also prohibited. Thus, all grants of the types described above in existence in 1624 were declared null and void, and none were ever again to be granted.

Sections two, three, and four were the most important parts of the Statute of Monopolies. They defined the law and embodied the immediate and practical consequences of that definition.⁷⁶ Part two stated that the force and validity of all monopolies, letters patents, and other taboo grants "shall be forever hereafter examined, heard, tried, and determined by and according to the common law of this realm and not otherwise".⁷⁷ The third section stated that any person, group, or body politic or corporate shall be deprived of using any monopoly or other grant. Nor could "any liberty, power, or faculty grounded or pretended to be grounded"⁷⁸ upon a patent be exercised.

The fourth section was the Statute's most important sub-

⁷⁴Ibid., pp.135-136.

⁷⁵Ibid.

⁷⁶Gordon, Monopolies by Patents, p.9.

⁷⁷Price, English Monopolies, p.136.

⁷⁸Ibid.

division. It was crucial because it was intended as the great bulwark of the public right against abusive monopolists. The law declared that, beginning forty days after the close of the Parliament of 1624, any citizen whose goods or chattels were seized or detained on pretext of a monopoly or other grant could sue for relief in any court of the common law. Actions against offenders under the 1624 Statute would be heard in the courts of the King's Bench, Common Pleas and Exchequer. An aggrieved subject was entitled to recover three times the damages sustained at the hands of the offender, and double the costs. A defendant in such an action who unlawfully attempted to stay or delay judgment, or execution of judgment, would be punished under the statute of Provision and Fraernure made during the reign of Richard II.

Sections five through fourteen merely created exceptions to the law. Some of the exceptions were legitimate; some were not. Even a few personal supervisory patents were maintained. The fifth section provided a necessary, beneficial exemption. The first and true inventors of any new manner of manufacture were allowed to keep their letters patents or grants of privilege, but only on the condition that they were not opposed to the law and did not raise prices,

hurt trade, or prove generally inconvenient. Such patents could remain in force for up to twenty-one years from the date of their bestowal. Any letters patent specifying a longer term of years would have to be altered to conform to the new limit. Section six confirmed the continued validity of invention patents having terms of fourteen years or less. The continued validity of any grant, privilege, power or authority confirmed by an act of Parliament was assured by section seven for as long as that act shall remain in force.

The powers vested in the justices of the various courts by the King, his heirs, or successors, was the concern of the eighth subdivision. These justices retained their right "to hear and determine offenses done against any penal statute"⁷⁹ and "to compound for the forfeitures of any penal statute . . . after plea pleaded by the party defendant".⁸⁰

Section nine of the Statute of Monopolies contained what turned out to be the most important exemptions. It declared that the act did not extend to

any corporations, companies, or fellowship of any art, trade, occupation or mystery, or to any companies or societies of merchants within this realm, erected for the maintenance, enlargement, or ordering of any trade or merchandise.⁸¹

⁷⁹Ibid., p.139.

⁸⁰Ibid.

⁸¹Ibid.

This provided an escape clause so that monopoly grants of the objectionable type previously made to individuals could now be made legally to chartered corporations and companies. On this foundation Charles I built an entirely new system of patents.

Section ten allowed to remain in force all patents and other grants of privilege concerning printing, the digging of saltpeter or making of gunpowder, and the casting of ordnance or ordnance shot. The same was true in the eleventh part of alum mining.

In section twelve the coal monopoly of the Hostmen of Newcastle-upon-Tyne was exempted from the act, as were grants for licensing taverns and for the selling or retailing of wine. Sections thirteen and fourteen validated the personal domination of glass-making by Sir Robert Mansell, of the transporting of calfskins by James Maxwell, of the making of smalt by Abraham Baker, and of the melting and casting of iron ore by Edward Lord Dudley.

The Statute of Monopolies of 1624 occupies a prominent place in the economic history of England. It was the first national patent law to contain all the essentials, and thereby made a large contribution to England's later technical progress.⁸²

In retrospect, the conflict between James and his parliaments

⁸²Sir John Clapham, A Concise Economic History of England from the Earliest Times to 1750 (Cambridge: University Press, 1949.), p.265.

was inevitable. Political trends in early seventeenth-century England favored the rural gentry, which began to dominate Parliament and owed its allegiance to the common law. In such an atmosphere James's concept of divine right monarchy was certain to be contested. It was merely a question of how the opposition would most effectively manifest itself. James had inherited from Elizabeth a grievous monopoly situation, which he frequently promised to alleviate but never did. The continued obnoxiousness of the patents caused Parliament to protest them constantly, leading to the events of 1621, when autocracy in England was dealt its fatal blow. Thus, the unhappy history of James's patents had a happy ending. Through their persistent offensiveness the monopolies became the instrument with which constitutional government in England was preserved and strengthened.

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the successful attack on the monopolies, particularly the impeachments of Mompeyson and Michell, which demonstrated the extent of the abuses and Commons' determination to end them. From the volume containing patent grants and miscellaneous papers pertaining to the monopolies I got Michell's petition and defense.

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AUTOBIOGRAPHY
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WILLIAM CHARLES THOMPSON

I was born on August 15, 1944, in Atlanta, Georgia, but have resided in Danville, Virginia, all my life. I was educated in the Danville Public Schools, graduating from George Washington High School in June, 1962. In the fall of that year I entered Hampden-Sydney College, from which I received the Bachelor of Arts Degree in 1966. I then went to the University of Richmond for a year of graduate study in history, completing the classroom hours necessary for the Master's degree. In September, 1967, I joined the faculty of Averett College, Danville, Virginia, as an Instructor of History.